



ATTORNEY GENERAL OF TEXAS  
G R E G   A B B O T T

May 2, 2005

Ms. Carol Longoria  
Public Information Coordinator  
University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2005-03753

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 223116.

The University of Texas System (the "system") received three requests from two requestors for information concerning the system's relationship with Sandia National Laboratories ("Sandia"). You state that you will release some of the responsive information to the requestors. You also state that the system does not maintain some of the requested information.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.110, 552.111, 552.113, 552.131, and 552.137 of the Government Code. Additionally, pursuant to section 552.305 of the Government Code, you have notified Sandia, an interested third party, of this request for information, of the fact that the request for information may implicate its proprietary interests, and of its right to submit arguments to this office explaining why the requested information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have considered the exceptions you claim and reviewed the

---

<sup>1</sup>The Act does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 499 (1988).

submitted information.<sup>2</sup> We have also received and considered arguments submitted by Sandia.

The system claims that the requested information is excepted in its entirety under section 552.104 of the Government Code. Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." This exception protects a governmental body's interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate that it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

You assert that the system has specific marketplace interests in the information at issue because "both the [system] and Sandia are partnered competitors in the marketplace with regard to any research discoveries and any subsequent licensing of technological discoveries stemming from this collaborative process." You inform us that, with regard to the information at issue, the system, together with Sandia researchers, "provide a 'service' or 'good' by licensing its inventions to other researchers and, most notably, to the United States government for purposes of homeland security." You further represent that the system competes with private companies in this arena. Based on these representations, we conclude that the system has demonstrated that it has specific marketplace interests and may be considered a "competitor" for purposes of section 552.104. *See* ORD 593.

You also assert that release of the submitted information would harm the system's marketplace interests. You inform us that the submitted information contains details about the types of technologies currently under research, price negotiations, internal agreement discussions, and shared commercial information, the release of which "would undermine the [system's] ability ... to market its research discoveries with interested third parties, including the federal government." You assert that, if the system's competitors had access to this

---

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information, they would gain an advantage in the marketplace and compromise the system's position in a competitive market. You further contend that releasing the details of the types of technologies currently under research would "facilitate the misappropriation of these discoveries by outside parties, further harming the [system's] marketplace standing." Based on your representations and our review of the submitted information, we conclude that the system has shown that release of the submitted information will bring about specific harm to the system's marketplace interests. *See* ORD 593. Accordingly, under section 552.104 of the Government Code, the system may withhold the submitted information. As our ruling on this issue is dispositive, we need not address your other arguments or the claims made by Sandia.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Amanda Crawford". The signature is fluid and cursive, with the first name "Amanda" and last name "Crawford" clearly distinguishable.

Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/sdk

Ref: ID# 223116

Enc. Submitted documents

c: Mr. Jim Spangler  
2612 Guadalupe Street #220  
Austin, Texas 78705  
(w/o enclosures)

Mr. John K. Pruett  
P.O. Box 7080  
Austin, Texas 78713  
(w/o enclosures)

Ms. Kerry Kampschmidt  
Intellectual Property Counsel  
Sandia National Laboratories  
P.O. Box 5800  
Albuquerque, New Mexico 87185-0141  
(w/o enclosures)